

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Jeffrey Bryson

Application No: 09/609,231

Filed: June 30, 2000

Title: COMPUTER AND HUMAN
INTERACTIVE SYSTEM AND
METHOD FOR NEGOTIATING THE
PURCHASE AND SALE OF GOODS
AND SERVICES



Appeal No.

Examiner: Fadok, Mark A.

Art Unit: 3625

AMENDED APPEAL BRIEF

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the final rejection of Claims 11 - 20 and 28 - 36. The text of the appealed claims is set forth in the Appendix to this Brief.

I. THE REAL PARTY IN INTEREST

The real party in interest is, Anna Bryson, the heir of the inventor and named Applicant who retains the entire right, title and interest in, to and under this application.

II. RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences which will directly affect or be directly affected by or have any bearing on the Board's decision in this pending appeal.

III. STATUS OF CLAIMS

Claims 1 - 10 (Cancelled)

Claims 11 - 20 (Rejected)

Claims 21 - 27 (Cancelled)

Claims 28 - 36 (Rejected)

Claims 37 - 41 (Cancelled)

Claims 11 - 20 and 28 - 36 are the only claims remaining. These claims have been finally rejected and are the subject of the present appeal.

IV. STATUS OF AMENDMENTS

The last amendments to the claims occurred in connection with an *Amendment and Request for Reconsideration in Support of Request for Continued Examination (RCE)* filed on October 31, 2005. This amendment was entered by the Examiner.

V. SUMMARY OF THE CLAIMED SUBJECT MATTER

The subject matter of the claims is directed to a computer and human interactive system for negotiating the purchase and sale of goods over a network such as the Internet. The system

includes primary sellers of goods and at least one virtual seller connected over a network, preferably by the Internet, by a host processor to allow a primary seller to sell his goods or services to a variety of buyers. To connect the sellers with a buyer, the network system includes a real time two-way communication connection allowing sellers to transmit transaction data concerning the purchase of goods or services for display on realtime upon a buyer's computer terminal.

With greater reference to the claims, Claims 11 and 28 and their dependent claims, include the limitation that Applicant's invention includes both a "primary" seller and a "virtual" seller of goods or services. As claimed, the virtual sellers include a database of the goods or services of a primary seller. As clarified by previous amendments, the virtual sellers are not merely customer service reps. and are not merely ordinary sellers of their own goods or services. Instead, the virtual sellers provide a separate platform for selling the goods or services of the primary seller when the primary seller is incapable of completing a sales transaction. Such events may occur when the primary sellers employees have gone home for the day or when the primary seller has a company-wide vacation day. These virtual sellers still communicate through a real-time two-way data connection with the buyers. However, the virtual sellers take the place of the primary seller under predetermined conditions to complete sales.

Claims 11 and 28 are the only independent claims pending.

Claim 11 has a single “means-plus-function” limitation as permitted by 35 U.S.C. § 102 reciting:

“processing means for selectively connecting a buyer computer terminal to either a primary seller computer terminal or a virtual seller computer based upon predetermined criteria”

The structure, material and acts corresponding to this limitation are described in the specification at page 8, lines 1 - 21; page 10, line 6 - page 11, line 2; page 15, lines 1 - 13; and page 19, line 2 - page 23, line 14, and illustrated in drawing Figures 1 as reference character 3, and described in drawing Figure 5 in the step identified by reference character 111.

Claim 28 does not possess a “means-plus-function” limitation. However, Applicant has interpreted Claim 28 to include two “step-plus-function” limitations. The first “step-plus-function” limitation is:

“providing a host processor system interconnected with at least one primary seller of goods or services, at least one virtual seller who is not the primary seller for selling the goods or services of the primary seller, said virtual seller not possessing custody or control of the goods or services of the primary seller but having a database storing product information concerning the goods or services of the primary seller; and a plurality of buyers of goods or services”

The structure, material and acts corresponding to this limitation are described in the specification at page 8, lines 1 - 21; page 10, line 6 - page 11, line 2; page 15, lines 1 - 13; and page 19, line 2 - page 23, line 14, and illustrated in drawing Figures 1 as reference character 3, and described in drawing Figure 5 in the step identified by reference character 111.

The second “step-plus-function” limitation in Claim 28 is:

“providing a real time two-way data connection between the buyer and the selected primary seller or virtual seller for transmitting transaction data from the buyer in real time for visual display of the purchase data to the seller and for transmitting transaction data from the seller in real time for visual display of the purchase data to the buyer”

The structure, material and acts corresponding to this limitation are described in the specification at page 8, lines 16 - 21; page 10, line 20 - page 11, line 2; page 13, lines 2 - 16; page 14, lines 9 - 14; page 15, lines 1 - 13; and page 24, line 5 - page 26, line 3, and illustrated in drawing Figures 1, 3 and 4 as reference character 35.

VI. GROUNDS OF REJECTION

Each of the claims, 11 - 20 and 28 - 36 have been rejected under 35 U.S.C. §103.

Specifically, Claims 11, 16, 18 and 20 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ahluwalia* (U.S. Patent No. 6,728,685) in view of *Roberts* (U.S. Patent No. 6,295,551) and further in view of *Rose* (U.S. Patent No. 5,309,513). Claims 14, 15, 17, 21 - 27, 35 and 36 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ahluwalia* (U.S. Patent No. 6,728,685) in view of *Roberts* in view of *Rose* and further in view of Office Notice. Claims 12, 13, 19 and 28 - 30 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ahluwalia* in view of *Roberts* in view of *Rose* and further in view of *Kannan* (2001/0054064).

Claims 31 - 34 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Ahluwalia* in view of *Roberts* in view of *Rose* in view of *Kannan* (2001/0054064) and further in view of Official Notice.

VII. ARGUMENT

Obviousness Under 35 U.S.C. § 103

The subject matter of Claims 11 - 20 and 28 - 36 would not have been obvious in view of the prior art to one ordinarily skilled in the art at the time the invention was made.

Application of the Graham Factors is fundamental to a determination of obviousness. The Graham test includes four parts which must be applied in each and every case. *Graham v. John Deere*, 383 U.S. 1 (1966). These factors include:

1. determining the scope and contents of the prior art;
2. ascertaining the differences between the prior art and the claims in issue;
3. resolving the level or ordinary skill in the pertinent art; and
4. evaluating evidence of secondary considerations.

Analysis of the first two Graham factors is believed to have particular importance to the present appeal.

Once the Graham factors have been analyzed, the burden is on the Examiner to establish a *prima facie* case of obviousness. If this *prima facie* case is not established, Applicant is under

no obligation to submit evidence or arguments of non-obviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met.

1. There must be some suggestion or motivation, either in the references or in the knowledge generally available to one of ordinary skill in the art to modify the reference or combine reference teachings.
2. There must be a reasonable expectation of success.
3. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

The Applied Prior Art

Ahluwalia (U.S. Patent No. 6,728,685) discloses an Internet website for selling cars, specifically those of the Ford Motor Company. This reference does not provide any suggestion for a “virtual” seller in the event that the primary sales operator, in this case the Ford Motor Company, is not available.

Roberts (U.S. Patent No. 6,295,551) discloses a network system for facilitating the negotiation and purchase of goods or services including a first real time communication link over a network for communicating transaction data and a second communication link for transmitting voice. As explained by the Examiner, *Roberts* also teaches accessing a second sales operator when a first sales operator is not accessible. However, both the first and second sales operators are employees of a primary seller. *Roberts* does not provide any suggestion for

utilizing a virtual seller, which is not the primary seller, but instead is a separate entity that maintains a database of the primary seller for selling the primary seller's goods such as when the primary seller is not available.

Rose (U.S. Patent No. 5,309,513) describes an automated caller distributor (ACD) system in which a computer connects callers to agents via multiplexed telephone circuits. The persons are connected to agents based upon availability or special skill such as a form language of particular knowledge of a product. (See Column 4, lines 50 - 55). The system may include multiple ACD systems connected to multiple agents. Based upon caller demand or emergency situations, such as an ice storm, agents can be connected to different ACDs as required.

Rose does not indicate that the ACD system is to be used for sales. Moreover, even if there were a suggestion to use the system for sales, like *Ahluwalia* and *Roberts*, there is no suggestion that the ACD system is functioning as anything but a "primary" seller of a company. In other words, there is no suggestion in *Rose* that the ACD systems function to communicate, let alone sell, the products of another as claimed by Applicant.

Kannan (2001/0054064) is directed to an Internet service for distributing customers to a company's customer service representative (CSR). Again, there is no suggestion in *Kannan* for networking a plurality of customers with a single business, or for providing any type of virtual seller.

Official Notice has been taken by the Examiner for a networking system including capabilities for matching buyers and sellers in a geographic location.

An Obviousness Rejection is Entirely Improper

As recognized in recent Federal Circuit decisions, “virtually all inventions are combinations of old elements”. *In re Rouffet*, 47 U.S.P.Q. 2d 1453 (Fed.Cir. 1998). Therefore an Examiner may often find every element of the claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. “Rejecting patents solely by finding prior art corollaries for the claimed invention would permit an Examiner to use the claimed invention as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be an illogical and inappropriate process by which to determine patentability”. *Id* citing *Censonics v. Aerosonic Corp.*, 81 F.3d 1566, 1571 (Fed.Cir. 1996).

Rather, some teaching, suggestion, or incentive must exist to make the combination made by the Patentee. *Interconnect Planning Corp. v. Feil*, 227 U.S.P.Q. 543, 551 (Fed.Cir. 1988). Moreover, “[t]here must be a teaching or suggestion... to combine them in the way they were combined by the inventor.” *ATD Corp. v. Lydall, Inc.*, 159 F.3d 534 (Fed.Cir. 1998). This burden of showing obviousness can only be established by an objective teaching in the prior art. *Tech Air, Inc. v. Denso Mfg.*, 192 F.3d 1353 (Fed.Cir. 1999). The objective showing of a suggestion to combine prior art teachings in the manner of the invention “must be clear and particular... Broad conclusory statements... are not evidence.” *In re Dembiczak*, 175 F.3d 994 (Fed.Cir. 1999).

The Combination of *Ahluwalia*, *Roberts*, *Rose*, *Kannan* and
Even *Official Notice* Does Not Create Applicant's Invention

Neither *Ahluwalia*, *Roberts*, *Rose*, *Kannan* nor even Official Notice suggest a virtual seller for selling the goods of another. This is a feature found in every one of Applicant's claims. Thus, alone or even in combination, the cited references do not support a rejection of the claims under 35 U.S.C. § 103.

Roberts discloses switching from a first sales agent to a second sales agent, such as where the second sales agent has a relationship with the buyer. Both of the sales agents are representatives of the primary seller.

Similarly, *Rose* discloses an automatic called distributor system in which agents are allocated based upon need. However, there is no suggestion in *Rose* that the agents are sales agents or that they are selling the goods of another. At best, the combination of *Rose* and *Roberts* would suggest a sales network of the type described in *Roberts* which is capable of expanding in the event of an emergency, such as an ice storm, in accordance with the teaching of *Rose*. However, again, there is no suggestion that such sellers are "virtual" sales agents selling the goods or services of another party, a limitation in each of the claims.

Meanwhile, *Ahluwalia* describes an Internet website for selling cars. However, there is no suggestion within *Ahluwalia* for employing any type of "virtual" seller in the event that the primary sales operator, in this case Ford Motor Company, is not available.

Kannan provides a detailed structure for connecting buyers and sellers over the Internet. However, there is no suggestion for a virtual seller as claimed by Applicant.

Thus, the prior art, alone or in combination, does not suggest a sales system including a primary seller that is capable of selling its own goods or services, as well as a “virtual” seller which is not selling its own goods and does not maintain custody or control of the primary seller’s goods, but instead maintains a data base for enabling it to complete sales transactions. These are limitations found in each and every one of Applicant’s claims. Since the claimed features are nowhere suggested in the prior art, Applicant’s claims are allowable.

The dependent claims further include basis for their patentability. Claims 12 and 29 include the limitation wherein the selection of the virtual seller is based upon a determination of whether the primary seller has ceased sales operations. Claims 13 and 30 include the limitation wherein the connection to a virtual seller is based upon a determination of whether the primary seller has ceased sales operations for the day in accordance with predetermined periods of the day. Neither of these limitations are suggested in the prior art, and accordingly these limitations are believed to provide additional basis for the patentability of Claims 12, 13, 29 and 30.

VIII. CLAIMS APPENDIX

An appendix containing a copy of the claims is attached herewith as Claims Appendix.

IX. EVIDENCE APPENDIX

Applicant has not attached any evidence as an Appendix.

X. RELATED PROCEEDINGS APPENDIX

There are no related proceedings, and thus no related proceedings appendix is attached.

XI. CONCLUSION

The prior art, even in combination, does not suggest a "virtual seller" which is a limitation found in each and every one of the claims. Thus, the prior art even in combination does not obviate the claimed subject matter. Accordingly, the rejection under 35 U.S.C. §103 is improper, and allowance of Claims 11 - 20 and 28 - 36 is respectfully requested.

In conformance with the Board rules, this Brief is submitted in triplicate.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "David G. Duckworth".

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CLAIMS APPENDIX

Listing of the Claims:



11. A network system for facilitating the negotiation and purchase of goods or services for buyers and sellers, the system comprising:

a host processor system;

at least one buyer computer terminal including a display, operated by buyer of goods or services;

at least one primary seller computer terminal including a display, operated by a primary seller of goods or services for selling the goods or services of the primary seller;

a virtual seller computer terminal including a display, operated by a virtual seller of goods or services who is not the primary seller for selling the goods or services of the primary seller, said virtual seller not possessing custody or control of the goods or services of the primary seller but having a database storing product information concerning the goods or services of the primary seller;

a first real time two-way communication connection for selectively connecting said buyer computer terminal to said primary seller computer terminal or said virtual computer seller through said host processor system, said first communication connection for transmitting transaction data concerning the purchase of goods or services of said primary seller, input by a buyer into said buyer computer terminal, in real time to said seller computer terminal or to said virtual seller computer terminal for display to said seller and for transmitting transaction data, input by a seller into said seller computer terminal or said virtual seller computer terminal, in real time to said buyer computer terminal for display to the buyer;

said host processor system including processing means for selectively connecting a buyer computer terminal to either a primary seller computer terminal or a virtual seller computer based upon predetermined criteria, and

a sale agreement means for enabling a buyer to reach an agreement concerning the purchase of goods or services from a either a virtual or a primary seller over the network system.

12. A network system for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 11 wherein said predetermined criteria includes a determination of whether the primary seller has ceased sales operations.

13. A network system for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 12 wherein said primary seller operates and ceases sales operations during predetermined periods of the day and said host processor processing means connects a buyer computer terminal to a virtual seller computer based upon a determination that said primary seller has ceased sales operations for the day.

14. A network system for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 11 wherein said predetermined criteria includes a determination of whether a primary seller is located within a predetermined distance of the buyer.

15. A network system for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 11 wherein said predetermined criteria includes a determination of whether a primary seller is located within a predetermined distance of the buyer and a determination of whether the primary seller has goods or services sought to be purchased by the buyer.

16. The network system for facilitating the negotiation and purchase of goods and services for buyers and seller of Claim 11 wherein the goods or services include vehicles.

17. The network system for facilitating the negotiation and purchase of goods and services for buyers and seller of Claim 15 wherein the goods or services include vehicles.

18. A network system for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 11 further comprising:

a second communication connection for connecting a buyer operating said buyer computer terminal and a primary seller operating said primary seller computer terminal or virtual seller operating said virtual seller computer terminal, said second communication connection permitting real time speech communication between buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system.

19. A network system for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 12 further comprising:

a second communication connection for connecting a buyer operating said buyer computer terminal and a primary seller operating said primary seller computer terminal or virtual seller operating said virtual seller computer terminal, said second communication connection permitting real time speech communication between buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system.

20. The network system for facilitating the negotiation and purchase of goods and services for buyers and seller of Claim 18 wherein the goods or services include vehicles.

28. A method of facilitating the negotiation and purchase of goods or services for buyers and sellers comprising the steps of:

providing a host processor system interconnected with at least one primary seller of goods or services, at least one virtual seller who is not the primary seller for selling the goods or services of the primary seller, said virtual seller not possessing custody or control of the goods or services of the primary seller but having a database

storing product information concerning the goods or services of the primary seller; and a plurality of buyers of goods or services;

transmitting buyer identification information by a buyer to the host processor system;

selecting the virtual seller or a primary seller by the host processor system based upon predetermined criteria;

providing a real time two-way data connection between the buyer and the selected primary seller or virtual seller for transmitting transaction data from the buyer in real time for visual display of the purchase data to the seller and for transmitting transaction data from the seller in real time for visual display of the purchase data to the buyer, and

agreeing over the network system to the purchase of goods or services from a primary or virtual seller.

29. The method for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 28 further comprising the step of:

determining whether the primary seller has ceased sales operations; and

selecting the virtual seller or a primary seller by the host processor system is based upon the determination of whether the primary seller has ceased sales operations.

30. The method for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 29 wherein said primary seller operates and ceases sales operations during predetermined periods of the day.

31. The method for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 28 further comprising the step of:

determining the location of the buyer; and

the step of selecting the virtual seller or a primary seller by the host processor system is based upon the determination of the location of the buyer.

32. The method for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 28 further comprising the steps of:

determining the location of the buyer; and

determining what goods or services are sought to be purchased by the buyer;

and

the step of selecting the virtual seller or a primary seller by the host processor system is based upon the determination of the location of the buyer and the determination of what goods or services are sought to be purchased by the buyer.

33. The method for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 28 further comprising the step of:

providing a second communication connection between a buyer and a primary seller or virtual seller, the second communication connection permitting real time speech communication between the buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system.

34. The method for facilitating the negotiation and purchase of goods or services for buyers and sellers of Claim 32 further comprising the step of:

providing a second communication connection between a buyer and a primary seller or virtual seller, the second communication connection permitting real time speech communication between the buyers and sellers for facilitating the real time spoken negotiations for the purchase and sale of goods or services over the network system.

35. The network system for facilitating the negotiation and purchase of goods and services for buyers and seller of Claim 28 wherein the goods or services include vehicles.

36. The network system for facilitating the negotiation and purchase of goods and services for buyers and seller of Claim 33 wherein the goods or services include vehicles.